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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.Z., Jr., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.Z., Sr.,

Defendant and Appellant.

B268583

(consolidated with B268725)

(Los Angeles County
Super. Ct. Nos. DK11997
& CK91632)

APPEALS from orders of the Superior Court of Los Angeles County. Marguerite Downing, Judge. Case No. B268583 is affirmed. Case No. B268725 is dismissed.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Father A.Z., Sr., appeals from the dispositional order purporting to remove then four-year-old A.Z., Jr., from father's custody pursuant to Welfare and Institutions Code section 361, subdivision (c).¹ This appeal (case No. B268583) has been consolidated with father's appeal from the jurisdictional and dispositional findings related to another dependency case involving father's children with a different mother (case No. B268725). However, father has raised no issues related to the other dependency. Therefore, appeal B268725 is dismissed.

Father contends that since he was a noncustodial parent, as A.Z., Jr., did not reside with him, the court had no legal basis to remove A.Z., Jr., from his custody under section 361, subdivision (c). Father does not challenge the court's jurisdictional findings, or any other aspect of the court's dispositional order. The Los Angeles County Department of Children and Family Services (Department) takes no position in this appeal. The Department has asked this court to take judicial notice of the court's subsequent orders, terminating jurisdiction, awarding legal and physical custody of A.Z., Jr., to his mother C.R., and awarding father visitation rights. We take judicial notice as requested and affirm the dispositional order.

FACTUAL AND PROCEDURAL BACKGROUND

Because of the narrow issue on appeal, we limit our discussion of the facts to those necessary to resolve father's claim. Mother and father came to the attention of the Department after they were involved in a domestic violence incident on March 19, 2015. The Department's investigation revealed that mother and

¹ All further statutory references are to the Welfare and Institutions Code.

father were no longer involved in a relationship, and did not live together. Father's visits with A.Z., Jr., at mother's home were infrequent, and father did not take him for overnight visits. According to mother's daughters, R.V. and P.R., father would yell at and shake A.Z., Jr. A.Z., Jr., also told a social worker that father hit him "all over his body" and that father hit him with a belt on his back a "long time ago."

The relationship between mother and father had been plagued by domestic violence. The March 2015 incident occurred after father visited mother's home, but happened away from the home, and A.Z., Jr., was not present. Following the incident, mother filed for legal separation from father.

Father was uncooperative with the Department's investigation, and told social workers that he had no intention of participating in a Team Decision-making Meeting, and that he would not participate in services if a dependency case was opened for A.Z., Jr. Father felt the Department was "out to get him." He already had an open dependency case involving three older children he shared with a different mother.

A petition was filed as to A.Z., Jr., on June 29, 2015, based on father's physical abuse of A.Z., Jr., and mother and father's history of domestic violence. At the detention hearing, the court ordered A.Z., Jr., to remain with mother pending disposition.

At the October 21, 2015 combined jurisdiction and disposition hearing, the court ordered A.Z., Jr., removed from father under section 361, subdivision (c). Father was also ordered to participate in services, and was given monitored visitation with A.Z., Jr. Father did not object to the dispositional order on the basis asserted in this appeal.

During the pendency of this appeal, the juvenile court terminated jurisdiction after granting mother sole legal and physical custody of A.Z., Jr., and awarding father visitation.

DISCUSSION

Father contends there is no evidence he was a custodial parent at the time the petition was filed and therefore, there was no statutory basis for the court's removal order under section 361, subdivision (c). We agree with father that section 361, subdivision (c) applies only to custodial parents, with whom the child resided at the time the petition was filed. (*In re Abram L.* (2013) 219 Cal.App.4th 452, 460.) We also recognize it is undisputed that A.Z., Jr., never resided with father. However, we see no point in addressing further father's hypertechnical appellate challenge.

We cannot reverse the court's judgment unless "its error was prejudicial, i.e., it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*In re Dakota J.* (2015) 242 Cal.App.4th 619, 630.) Although an erroneous removal order may prejudice a parent by interfering with a parent's liberty interest in caring for their child, and by "start[ing] the clock running on reunification efforts" leading to the potential termination of parental rights (*id.* at pp. 630-632), we find no prejudice here. Before A.Z., Jr., was declared a dependent child, father had only occasional visits with him in mother's home. During the dependency, father continued to have monitored visitation rights and said he did not want reunification services. Father has not challenged jurisdiction, or any other aspect of the court's dispositional order (such as the requirement that his visits be monitored), and dependency

jurisdiction has been terminated, so there is no risk of the termination of father's parental rights.

DISPOSITION

The judgment in case B268583 is affirmed. The consolidated appeal, B268725, is dismissed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.